

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

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| IN THE MATTER OF THE JOINT APPLICATION |) | |
| OF VERIZON DELAWARE INC. AND LEVEL 3 |) | |
| COMMUNICATIONS, LLC, FOR APPROVAL |) | |
| OF AN INTERCONNECTION AGREEMENT |) | PSC DOCKET NO. 01-51 |
| PURSUANT TO SECTION 252(e) OF THE |) | |
| TELECOMMUNICATIONS ACT OF 1996 |) | |
| (FILED JANUARY 31, 2001) |) | |

ORDER NO. 6597

This 22nd day of March, 2005, the Commission makes the following entry and Orders:

1. At its public meeting on January 25, 2005, the Commission sat to consider whether to approve or reject the fully-negotiated "Amendment No. 1" to the interconnection agreement between Verizon Delaware Inc. ("VZ-DE") and Level 3 Communications, LLC ("Level 3"). The two carriers sought the Commission's approval of the Amendment under the provisions of 47 U.S.C. § 252(e)(2)(A).¹ WilTel Communications, Inc. ("WilTel") filed comments requesting that the Commission either reject the Amendment or direct that the Amendment's terms relating to the rates for terminating Voice over Internet Protocol ("VoIP") traffic be made available to it. After considering the matter, the Commission decided (3-0) to take no action on the Amendment. The Commission did so recognizing that, given its silence, the Amendment would be deemed approved as of February 3, 2005. See 47 U.S.C. § 252(e)(4). At the time it decided not to take any

¹Amendment No. 1 is an amendment to an interconnection agreement between VZ-DE and Level 3 that the Commission previously approved in 2001. See PSC Order No. 5707 (Apr. 21, 2001). For purposes of this entry, Amendment No. 1 will be referred to as "the Amendment."

action, the Commission indicated that it would explain in a later entry its reasons for following such a course. This is that explanation.²

2. As noted above, WilTel's comments focus on the provisions in the Amendment related to the compensation that one carrier (primarily Level 3) will pay the other (primarily VZ-DE) for terminating on the public switched network exchanged VoIP traffic. The Amendment sets forth an interim regime of such charges. In most instances, those charges will prevail until the Federal Communications Commission ("FCC") might act in several proceedings related to intercarrier compensation for exchanged VoIP traffic now pending before the FCC.³

3. The Commission need not detail here the particulars of WilTel's claim that the VoIP termination rate terms in the Amendment discriminate against WilTel (and other like situated non-LEC carriers) and put it at a competitive disadvantage in its ability to provide its own VoIP services. Similarly, the Commission need not replay here VZ-DE's and Level 3's rejoinders that the Amendment is not discriminatory, that the Amendment (in its entirety) is available to all other requesting

²While WilTel asked the Commission to reject the Amendment (if its terms were not made available to it), it later suggested that if the Commission might not be inclined to reject the Amendment then it should simply allow it to become "deemed approved" under § 252(e)(4). Similarly, both VZ-DE and Level 3 urged the Commission to approve the negotiated Amendment as offered. However, given the time frame, these two carriers were not adamantly opposed to the Commission allowing the Amendment to become "deemed approved" at the expiration of the 90-day review period prescribed by 47 U.S.C. § 252(e)(4).

³See In the Matter of IP-Enabled Services, Notice of Proposed Rulemaking, 19 FCC Rcd. 4863 at ¶¶ 61-62 (FCC 2004) (raising intercarrier compensation issues in the context of IP-enabled services); In the Matter of Petition of Level 3 Communications, LLC for Forbearance Under 47 U.S.C. Section 160(c) from Application of Section 251(g) of the Communications Act of 1934, as Amended, the Exception Clause of Section 51.701(b)(1) of the Commission's Rules, and Section 69.5 of the Commission's Rules, WC Dckt. 03-266 (filed Dec. 23, 2003) (petition by Level 3 for FCC to forbear from applying any access charges to the termination of VoIP traffic to the public switched network). See also In the Matter of Developing a Unified Intercarrier Compensation Regime, Notice of Proposed Rulemaking, 16 FCC Rcd. 9610 (FCC 2001) and Further Notice of Proposed Rulemaking, CC Dckt. No. 01-92, FCC 05-33 (FCC adopted Feb. 10, 2005).

carriers, and that WilTel's challenge seeking to opt-into the Amendment's VoIP termination rates is premature. It is enough now to say that the crux of the issue is whether impermissible discrimination - and in particular "discrimination" under 47 U.S.C. § 252(e)(2)(A)(i) - arises if the Amendment's VoIP termination rates are not made available to a carrier (such as WilTel) which will deliver its VoIP traffic over Feature Group D trunks (normally associated with interexchange carriers) rather than over the local interconnection trunk architecture described in the Amendment. Lurking within that issue are the broader questions of exactly what is the nature of VoIP traffic and what intercarrier compensation scheme does, or should, apply when a carrier terminates such traffic on the public switched network.

4. Yet, these are the same issues that are currently being considered by the FCC in the several proceedings now pending before it.⁴ Given that, the Commission thinks it might be best to simply allow the Amendment to be deemed approved. In doing that, the Commission can avoid expressing its views on the various provisions in the relevant federal statutes and FCC regulations that the FCC is presently scrutinizing in the several pending proceedings focusing on the regulatory framework for VoIP services. In this unique context, it appears better to say nothing rather than express conclusions or opinions that would have to be revisited once the FCC might speak.

5. Finally, the Commission emphasizes that this silence carries no voice. No one should draw conclusions or even inferences from this inaction. All that has occurred is that the Amendment was deemed approved by operation of law. 47 U.S.C. § 252(e)(4). The Commission's

⁴See n. 3 above. In fact, Verizon, Level 3, and WilTel have been active participants in the Level 3 Petition for Forbearance proceeding. The FCC must act

inaction here will not carry any preclusive effect in any later proceeding that might emerge.

Now, therefore, **IT IS ORDERED:**

1. That, by the vote taken at the Commission's public meeting on January 25, 2005, this Commission takes no action on the Amendment to the Interconnection Agreement entitled "Amendment No. 1," submitted by Verizon Delaware Inc., and Level 3 Communications, LLC, on November 5, 2004. Under the provisions of 47 U.S.C. § 252(e)(4), such Amendment was deemed approved as of February 3, 2005. The Commission has set forth its reasons for this course of inaction in this entry.

2. That the terms and conditions set forth in PSC Order No. 5707 (April 21, 2001), as they pertain to the Commission's approval of the underlying Interconnection Agreement between Verizon Delaware Inc., and Level 3 Communications, LLC, shall remain in force and effect.

3. That, within ten (10) days of this Order, Verizon Delaware Inc., and Level 3 Communications, LLC, shall file with the Commission a revised, complete (or compiled) Interconnection Agreement that incorporates Amendment No. 1. The revised agreement may substitute the new provisions or attach the Amendment to the underlying Interconnection Agreement. The revised agreement, including Amendment No. 1, shall be available for public inspection and copying under the provisions of 47 U.S.C. § 252(h).

4. That Verizon Delaware Inc., shall make available, to the extent required by 47 U.S.C. § 252(i) and any applicable implementing regulation, any interconnection, service, or network element provided under the amended Agreement to any other requesting telecommunications

on that petition by March 22 or the application will be deemed approved.

5. That Verizon Delaware Inc., and Level 3 Communications, LLC, shall promptly notify the Commission of the nature and terms of any changes to be made to the amended Agreement either by further agreement of the parties or by operations of the terms of the present Agreement.

BY ORDER OF THE COMMISSION:

Commissioner

/s/ Karen J. Nickerson
Secretary